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EXAMINER
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LEWIS, CHERYL RENE A

ART UNIT	PAPER NUMBER
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2167

NOTIFICATION DATE	DELIVERY MODE
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02/18/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

dcpatdkt@gtlaw.com  
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## Office Action Summary

Application No.

09/694,276

Applicant(s)

SETH, BLUMBERG J.

Examiner

CHERYL LEWIS

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-114 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-114 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 October 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 3/18/05 & 7/20/04.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This Office Action is in response to the applicants' communication received on September 8, 2005 and July 20, 2004.
2. Claims 1-114 are presented for examination.
3. The applicant has amended claims 48, 93, and 98 in the amendment received on June 11, 2004. Also, the amendment received on June 11, 2004 adds additional new claims 100-114. The applicant has not cancelled any claims.
4. Applicant's arguments with respect to claims 1-114 have been considered but are deemed to be moot in view of the new grounds of rejection.

### ***Remarks***

5. On March 14, 2008, the Examiner and the applicant's representative, Richard Kurtz, agreed to an allowance of the pending application. Also, the Examiner and Attorney Kurtz agreed to an Examiner's Amendment to the claim limitations of claims 21-28, 39, 41, 48-56, 62, 65, 68-92, 93, 94, 96, and 94-114. However, the Examiner cannot agree to an allowance of pending claims 1-114 at this time because the indicated allowability stated in the interview on March 14, 2008 of claims 1-114 is withdrawn in view of the newly discovered reference(s) to "www.ESPN.com". Rejections based on the newly cited reference(s) follow.

***Terminal Disclaimer***

6. The terminal disclaimer filed on May 19, 2004 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of Patent No. 6240415 has been reviewed and is accepted. The terminal disclaimer has been recorded.

***Claim Rejections - 35 USC § 101***

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

the claimed invention is directed to non-statutory subject matter.

8. Claims 21, 29, 39, 45, 48, 60, 62, 65, 68, 69, 93, and 96, are rejected as being directed to non-statutory subject matter.

Claim 21 is directed to a method where a person views data, analyzes the information received, and reports the analysis which are manual steps with a trivial use of technology ("using a computer"). According to the claim, the computer is not analyzing or reporting the analysis; the user is analyzing the data and reporting the result (which could include mailing the opinion or decision for storage to a central database). It appears that the computer performs no other function than to display the information needed for the user to form his/her opinion or decision. A similar problem exists with claim 69 where a trivial use of technology exists with "the remote party transmitting a decision from a remote terminal via a communications link"; similar problem exists with claim 29 where a trivial use of technology exists with "means for transmitting an access

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enabling message to the remote party via the communications link”; similar problem exists with claim 39 where a trivial use of technology exists with “a screen used by a remote party for monitoring, using a computer, both current data for a player”; similar problem exists with claim 45 where a trivial use of technology exists with “a screen used by a remote party for monitoring, using a computer, both current data for a player” and “remote user being capable in substantially real time or near real time after receiving the analysis”; similar problems exists with independent claims 48 and 60; similar problem exists with claim 62 where a trivial use of technology exists with “locating the remote party in a seat associated with a live sports event such that the *remote party visibly views* an actual live sports event associated with the database”, the remote user performs no other than a mental step to *visibly view* the claimed actual live sports event; similar problem exists with claim 65 where a trivial use of technology exists with “the remote party being located in a spectator seat to be physically present to view an actual sports event related to the data”; likewise, similar problems exists with independent claims 68, 69, 93 and 96 (see *MPEP* 2106).

Examples of claimed processes that do not achieve a practical application include.

- step of “updating alarm limits” found to constitute changing the number value of a variable to represent the result of the calculation (*Parker v. Flook*. 437 U.S. 584, 585, 198 USPQ 193, 195 (1978));

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- final step of "equating" the process outputs to the values of the last set of process inputs found to constitute storing the result of calculations (*In re Gelnovatch*, 595 F.2d 32, 41 n.7, 201 USPQ 136, 145 n. 7 (CCPA 1979))

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-10, 16, 21, 22, 25, 28-34, 38-40, 44-46, 48-55, 60-70, 88, and 93-99 are rejected under 35 U.S.C. 103(a) as being unpatentable over **ESPN.com, Stats and profile, "Jose Valentin profile", May 8, 1999 and Junkin, Patent No. 5846132 (filed April 10, 1996)**.

11. Regarding Claims 1, 29, 48, and 60, ESPN.com teaches a current data (page 1 of 1, *Career Statistics, Batting Totals, YR: 99, TM: MIL, G: 4*, etc.) of a player (page 1 of 1, *Jose Valentin*) together with a historical data (page 1 of 1, *Career Statistics, Batting Totals, YR: 92-99, Totals, G: 677, AB: 2162*, etc.) related to that player. Data including historical data relating to the player with the current data related to that player being accessed (ESPN.com enables accessing the profile of a baseball player, *Jose Valentin*, from a player index, page 1 of 1. The player index includes information about baseball players, with analysis, current season's statistics, and historical statistics.). Compiling a

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report (ESPN.com compiles a report consisting of *Profile & Scouting Report* information about baseball players, see page 1 of 2, *Profile & Scouting Report, i.e., Height, Weight, 1998 Season, etc.*), the report including the current data of a player together with the historical data related to that player (page 1 of 1, information about baseball players, with analysis, current season's statistics, and historical statistics); and transmitting the compiled report of the data of the player to the remote party (ESPN.com enables users to download information about baseball players, including analysis, current season's statistics, and historical statistics). Although, ESPN.com teaches storage of data of a player it does not teach a current database together with a historical database.

However, Junkin teaches a current database (col. 8, lines 30-36, element 26, *team roster database*; [*Team roster database* provides a list of 'current' team players. Each participating team member identifies their own home telephone number, social security number, etc.]) of a player together with a historical database (col. 4, lines 14 & 15, element 22, *contest roster database*; [*Contest roster database* tracks the highest score of participants (i.e., winner) in the interactive game (col. 5, lines 40-58). *Contest roster database* also provides an indicator of each player's performance for each day or cumulative over a season, or in weekly increments (col. 6, lines 7-9)]) related to that player (col. 4, lines 14-21, '...participants are playing the interactive system...'); communicating data (col. 4, lines 6-21) between a central database processing resource (col. 4, lines 14-21, element 27, *league database*; [*League database* is comprised within the central controller of the network, wherein the network enables an

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interactive method for participants to compete in an interactive game based on an event. *League database* provides information as to which participants are playing the interactive system on a national, region, state, county and/or city/town level.]) and at least one remote party (col. 8, lines 41-59, element 40, *interactive device*; 'While the participants are watching golf...', col. 8, line 52; 'The participant can access his team roster anytime using an input device 44.', col. 9, line 17 & 18; and 'After inputting the appropriate identification information, such as the participant's social security number, telephone number...', col. 9, lines 21-27); receiving an access request message (col. 12, lines 61-66, '...the menu 52 provides a message to access the options menu for selection of players on participant's team.') from the remote party via a communications link (col. 3, lines 61-67, col. 4, lines 1-4) ; and transmitting an access enabling (col. 9, lines 25-31, '...the central controller 2 or the statistical controller 6 transmits to the display device 42 a menu 52...', message to the remote party (col. 12, lines 61-66, '...the menu 52 provides a message to access the options menu for selection of players on participant's team.') and enabling message permitting the remote party to access the database ('The controller 2 verifies the identification information...', col. 12, lines 47-48; '...the controller 2 transmits over the cable line to the cable box or other device for displaying a message on the television screen that the identification information is incorrect, and instructions to reenter the identification information. If the identification information is correct, the controller 2 will transmit the video information over the cable line to the cable box for displaying the menu 52 onto the television screen.', col. 12, lines 47-60).



It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the current data and historical data of a player taught by ESPN.com with the current database and historical database means as taught by Junkin because Junkin's current database and historical database could enable the current data and historical data of ESPN.com to include a lists of individual profiles of participants who participate in playing the interactive system (col. 4, lines 16-21) and a list of participants who participate in an event to closely simulate real life situations within the interactive system (col. 4, lines 50 and 51).

12. Regarding Claims 2, 30, 49, 88, 94, and 97, the limitations of these claims have been noted in the rejection of claims 1, 29, 48, and 60 presented above. In addition, Junkin teaches a remote participant to respond to the central database to participate a decision relating to the corporate event (col. 9, line 21, *inputting*, col. 9, lines 56-57, 'The participant may also have the option to participate in a league, col. 10, lines 41-44).

13. Regarding Claims 3 and 50, ESPN.com teaches periodically updating the database with at least one of the historical or current data about the player (ESPN.com, page 1 of 2, *Profile & Scouting Report*).

14. Regarding Claims 4, 31, and 51, ESPN.com teaches analyzing the data of the player and providing the report to the remote party based on the analysis of the data of the player (ESPN.com, page 1 of 2, *Profile & Scouting Report*).

15. Regarding Claims 5, 6, 7, 10, 32, 33, 34, 52, and 53, the limitations of these claims has been noted in the rejections of claims 1, 29, 48, and 60 presented above. They are therefore rejected as set forth above.

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16. Regarding Claims 8 and 54, the limitations of these claims has been noted in the rejections of claims 1, 29, 48, and 60 presented above. In addition, ESPN.com teaches an analysis predicting play scenarios and probabilities of selected players (page 1 of 1, *Career Statistics*).

17. Regarding Claims 9, 25, 55, 63, and 66, the limitations of these claims has been noted in the rejections of claims 1, 29, 48, and 60 presented above. In addition, ESPN.com teaches the Internet (page 1 of 1, *ESPN.com* is a "dot-com" company that operates its business on the internet using its URL).

Junkin teaches an access request from remote parties via a communications link (col. 3, lines 61-67, col. 4, lines 1-4).

18. Regarding Claims 16, 28, 38, 44, 61, and 64, ESPN.com does not expressly teach remote party receives information about a sports event through television and responds through the computer network to the database.

Junkin teaches remote party receives information about a sports event through television (col. 9, lines 4-16, *television screen*) and responds through the computer network to the database (col. 9, lines 4-16, *interactive device*).

19. Regarding Claim 21, the limitations of this claim has been noted in the rejection of claims 1, 29, 48, and 60 presented above. In addition, Junkin teaches the remote party reporting the analysis of the combined data to a central database processing resource associated with the management of a player (col. 5, lines 40-53, col. 6, lines 19-29).

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20. Regarding Claims 22, 40, and 46, ESPN teaches data relating to the current data of a player (page 1 of 1, *Career Statistics, Batting Totals, YR: 99, TM: MIL, G: 4*, etc.), historical data relating to the player (page 1 of 1, *Career Statistics, Batting Totals, YR: 92-99, Totals, G: 677, AB: 2162*, etc.), other related players (page 1 of 1, *Baseball, Player Index*), and a background of the player (page 2 of 2, *Profile & Scouting Report*) and other related players (page 1 of 1, *Baseball, Player Index*).

21. Regarding Claim 39, the limitations of this claim has been noted in the rejection of claims 1, 29, 48, and 60 presented above. In addition, Junkin teaches a communications network (figure 1, element 246, *Communications Network*) between a central database processing resource (col. 4, lines 14-21, element 27, *league database*) and remote user for communication analysis of the combined data with the remote party (col. 4, lines 14-21).

22. Regarding Claim 45, the limitations of this claim has been noted in the rejection of claims 1, 29, 48, and 60 presented above. In addition, Junkin teaches a screen for monitoring (col. 8, lines 43-47, '*...display screen...*'), using a computer (col. 3, lines 39-55), screen being used by a remote user (col. 8, lines 43-55); a computer for receiving, through the network (col. 3, lines 39-55), the analysis (col. 4, line 25 & 34-63); and the remote user being capable in substantially real time receiving the analysis to respond to the analysis and submit a decision to a central database (col. 4, lines 34-63).

23. Regarding Claims 62, 65, and 67-69, the limitations of this claim has been noted in the rejections of claims 1, 29, 48, and 60 presented above. In addition, Junkin teaches the remote party in a seat associated with a live sports event such that the

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remote party visibly views an actual live sports event associated with the database (figures 4A-4B, col. 8, lines 43-60).

24. Regarding Claim 70, the limitations of this claim has been noted in the rejections of claims 1, 29, 48, and 60 presented above. In addition, Junkin teaches a telephone network (col. 9, line 10, *telephone*).

25. Regarding Claims 93, 95, 96, 98, and 99, the limitations of these claims has been noted in the rejections of claims 1, 29, 48, and 60 presented above. They are therefore rejected as set forth above.

26. Claim 11-15, 17, 18, 20, 23, 24, 26, 27, 35-37, 41-43, 47, 56-59, 71-87, 89-92, and 100-114 are rejected under 35 U.S.C. 103(a) as being unpatentable over **ESPN.com, Stats and profile, "Jose Valentin profile", May 8, 1999 and Junkin (Patent No. 5846132, filed April 10, 1996)** as applied to claims 1, 21, 29, 39, 45, 48, 60, 62, 65, 68, 69, 93, and 96 above, and further in view of **Walker et al. (Patent No. 6224486 B1, filed February 24, 1998, hereinafter Walker)**.

27. Regarding Claim 11, ESPN.com nor Junkin teach encrypting data.

Walker teaches encrypting the data (col. 17, lines 17-21).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the interactive sports methods of ESPN.com and Junkin with the tournament database of Walker's method because Walker's tournament database enables registering players to participate in tournament games by accepting

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entry fee payments with a credit card, wherein the payment information involves a secure perimeter to encrypt credit card information.

28. Regarding Claims 12 and 35, the limitations of these claims have been noted in the rejections of claims 1, 29, 48, and 60 presented above. In addition, Walker teaches providing credit card information of the remote user prior to providing data and transferring data to the remote user after charging a credit card (col. 14, lines 59-67, col. 15, lines 1-17).

29. Regarding Claim 13, Walker teaches transferring money electronically via a telecommunications line between respective financial entities related to the remote party and to an operator of the central database after transfer of money electronically providing data to the remote party (col. 14, lines 59-67, col. 15, lines 1-17).

30. Regarding Claims 14, 26, 36, and 42, Walker teaches the remote party transmitting a decision from a remote terminal to the database through a computer network, the decision being at least one relating to financial reward to a player (col. 6, lines 30-39 & 52-65, col. 8, lines 1-10).

31. Regarding Claims 15, 27, 37, and 43, Walker teaches communication to the remote user is through a communications link, wherein the remote party sends a response to the database the response being through a computer network (co. 14, lines 59 -67).

Junkin teaches near real time in relation to the communication received by the remote user (col. 6, lines 42-43).

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32. Regarding Claims 17 and 58, Walker teaches the remote party receives at least one expert opinion (col. 8, lines 60-67, col. 9, lines 1-6), wherein the remote transmits a response in relation at least in response to the expert opinion (col. 8, lines 60-67, col. 9, lines 1-6).

33. Regarding Claims 18, 20, 56, and 59, the limitations of these claims have been noted in the rejections of claims 17 and 58 presented above. They are therefore rejected as set forth above.

34. Regarding Claims 19 and 57, Walker teaches a hierarchy of remote users, different levels in the hierarchy having weight for their respective decision can be transmitted to the central database (col. 5, lines 1-20 & 25-37).

35. Regarding Claim 23, Walker teaches remote party of a database pays for at least one of an analysis of the data and submission of money into a bonus pool associated with at least one player of a sports team (col. 6, lines 30-39 & 52-65, col. 8, lines 1-10).

36. Regarding Claim 24, Walker teaches permitting the remote party to submit an assessment to a database related to the computer (col. 6, lines 6-18 & 27-48), the assessment being selected by a remote party (col. 6, lines 6-18 & 27-48).

37. Regarding Claims 41 and 47, Walker teaches the remote party of the database to pay for a communication with the central database through a computer network (col. 5, lines 15-21 & 39-55, col. 6, lines 9-18 & 42-58), and including a computer communication network for submitting data to a remote user after receipt of the payment (col. 5, lines 15-21 & 39-55, col. 6, lines 9-18 & 42-58).

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38. Regarding Claims 71-80 and 101-110, the limitations of this claim has been noted in the rejections of claims 1, 29, 48, and 60 presented above. In addition, Walker teaches the wireless communication device and network means (col. 5, lines 28-30).

39. Regarding Claims 81-87, 100, and 111-114 and, the limitations of this claim has been noted in the rejections of claims 1, 29, 48, and 60 presented above. In addition, Junkin teaches the entertainment event (col. 9, lines 4-10).

40. Regarding Claims 89-92, the limitations of these claims has been noted in the rejections of claims 1, 29, 48, and 60 presented above. They are therefore rejected as set forth above.

***Name of Contact***

41. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Lewis whose telephone number is (571) 272-4113. The examiner can normally be reached on 6:30-3:00. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cottingham can be reached on (571) 272-7079. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

(571) 273-4113 (Use this FAX #, only after approval by Examiner, for "INFORMAL" or "DRAFT" communication. Examiners may request that a formal paper/amendment be faxed directly to them on occasions.).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist/ Technology Center (571) 272-2100.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Cheryl Lewis/  
Primary Examiner, Art Unit 2167  
February 10, 2009